DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAI'I

In the Matter of the Incorporation

of

HUALALAI COMMUNITY ASSOCIATION

ARTICLES OF INCORPORATION

I HEREBY CERTIFY that this is a true and correct copy of the original recorded in this office.

Kathryn Sprague
DIRECTOR OF COMMERCE AND CONSUMER AFFAIRS

By:
BUSINESS REGISTRATION ASSISTANT
Date: AUG 13, 1996

Kyong-Su Im
Chun, Kerr, Dodd, Beaman & Wong
Suite 900, Hawaii Building
745 Fort Street
Honolulu, Hawaii 96813

Attorney for Petitioners
ARTICLES OF INCORPORATION

OF

HUALALAI COMMUNITY ASSOCIATION

THESE ARTICLES OF INCORPORATION, made and entered into this 15th day of July, 1996, by and between the undersigned, being all residents of the State of Hawaii, United States of America:

W I T N E S S E S T H:

That KIM RICHARDS, whose residence address is P. O. Box 6878, Kamuela, Hawaii 96743, and JEFFREY MONGAN, whose residence address is 78-6980 Kaluna Street #112, Kailua-Kona, Hawaii 96740, desiring to become incorporated as a nonprofit corporation in accordance with the laws of the State of Hawaii, and to obtain the rights and benefits conferred by said laws upon nonprofit corporations, do hereby associate themselves together and unite and form a nonprofit corporation and do make and enter the following Articles of Incorporation, the terms whereof it is agreed shall be equally obligatory upon the parties signing this instrument and upon all the parties who from time to time may be directors of the corporation:
I

NAME

The name of the corporation shall be "HUALALAI COMMUNITY ASSOCIATION" (hereinafter referred to as the "Community Association").

II

LOCATION

The location of the Community Association shall be on the Island of Hawaii, County of Hawaii, State of Hawaii, and the specific address of its initial office shall be Kaupulehu Four Seasons Site, Queen Kaahumanu Highway, North 87 Mile Marker, Kaupulehu-Kona, Hawaii 96740.

III

NONPROFIT STATUS

The Community Association is not organized for profit and will not issue any stock and no part of its assets, income or earnings shall be distributed to its members, directors or officers; provided however, that the Community Association may confer benefits upon its members in conformity with its purposes and that the officers and directors of the Community Association may be reasonably compensated for services actually rendered if such compensation is approved by vote or written consent of the
members of the Community Association as provided in the Declaration (as defined in Article IV below); and provided, further, that the officers and directors shall be entitled to reimbursement for expenses incurred in carrying out the business of the Community Association.

IV

PURPOSES; DEFINITIONS

The specific purposes for which the Community Association is formed are to provide for the management, maintenance, control of subdivision common property and facilities, including subdivision roadways, for the benefit of the "Property" on the Island of Hawaii, County of Hawaii, State of Hawaii, as defined in that certain Master Declaration of Protective Covenants, Conditions and Restrictions and Reservation of Easements for Hualalai at Historic Ka'upulehu dated May 9, 1996, made by Kaupulehu Makai Venture, a California general partnership (hereinafter called "Declarant"), and the Trustees of the Estate of Bernice Pauahi Bishop (the "Bishop Estate"), recorded or to be recorded in the Bureau of Conveyances of the State of Hawaii, as the same may be amended, supplemented and/or modified from time to time as therein provided (hereinafter called the "Declaration"), and also to enhance and protect the value and desirability of the aforesaid Property and to promote the health, safety and
welfare of the members of the Community Association. All terms used in these Articles of Incorporation shall, unless stated otherwise, be defined as set forth in the Declaration.

V

DURATION AND POWERS

In furtherance of the foregoing objects and purposes and in accordance with the laws of the State of Hawaii applicable to nonprofit corporations, the Community Association shall have succession and existence in perpetuity and shall have and exercise any and all powers, rights, privileges and immunities that are now or may hereafter be secured by law to nonprofit corporations organized under the laws of the State of Hawaii. Without limitation as to the above stated powers and any other powers stated or referred to elsewhere in these Articles of Incorporation, the Community Association shall have the following powers:

(a) It may exercise all of the powers and privileges and perform all of the duties and obligations of the Community Association as set forth in the Declaration, said Declaration being incorporated herein as if set forth at length.
(b) It may fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Declaration, and pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Community Association, including all licenses, taxes or governmental charges levied or imposed against the property of the Community Association.

(c) It may acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Community Association, subject to the provisions of the Declaration.

(d) It may borrow money, and mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred by the Community Association, subject to the provisions of the Declaration.

(e) It may dedicate, sell or transfer all or any part of the property of the Community Association, subject to the provisions of the Declaration.

(f) It may sue, be sued, complain and defend, in its corporate name.
(g) It may have a corporate seal which may be altered at its pleasure, and it may use such seal by causing it or a facsimile thereof, to be impressed, affixed or in any other name reproduced.

(h) It may elect or appoint officers and agents as the business of the Community Association may require, define their duties and fix their compensation.

(i) It may make and amend bylaws not in conflict with law, the Declaration, or these Articles of Incorporation.

VI

MEMBERSHIP

The Community Association shall have such Members as are provided in the Declaration and in the Bylaws of the Community Association (the "Community Bylaws").

VII

VOTING RIGHTS

The voting rights of the Members of the Community Association shall be as provided in the Declaration.

Whenever pursuant to the terms of the Declaration, these Articles of Incorporation or the Community Bylaws, the approval or other action of the Community
Association or the Members is required to be obtained, such approval or action shall be deemed effective if the requisite number or percentage of Members approves or takes such action at a meeting of the Members at which a quorum is present, or by an approval or other appropriate instrument executed in writing by all the Members entitled to vote on the subject matter without a meeting. Any such approval or other action by the requisite number or percentage of Members at a meeting or pursuant to written approval or other instrument after the matter or action being approved is done shall be effective retroactively as a ratification thereof to the same effect as if such approval or other action had been done prior thereto. Unless otherwise specifically provided in the Declaration, these Articles of Incorporation or the Community Bylaws, the requisite number for action shall be the Members holding a majority of the voting power present, in person or by proxy, at a meeting at which a quorum is present.

VIII

BOARD OF DIRECTORS

The initial Board of Directors of the Community Association shall consist of three (3) directors. The number of directors on the Board of Directors may be increased or decreased from time to time by the Members of
the Community Association at a duly called and conducted meeting, provided that the number of directors shall never be less than three (3), and provided further that at all times at least one (1) member of the Board of Directors shall be a resident of the State of Hawaii, and in the absence of such member the Board of Directors shall not function. The members of the Board of Directors shall be elected, appointed and removed, and vacancies in the Board of Directors shall be filled at such times, in such manner and for such terms, as may be prescribed by the Declaration and by the Community Bylaws. The Board of Directors shall have full power to control and direct the business and affairs of the Community Association and to manage its properties, subject, however, to any limitations which may be set forth in statutory provisions, in these Articles of Incorporation, in the Community Bylaws, or in the Declaration.

The names, and addresses of the persons who are to act as the initial directors until the selection of their successors at the first annual meeting of the Community Association are as follows:
NAME                      RESIDENCE ADDRESS
Kim Richards              P. O. Box 6878
                          Kamuela, Hawaii  96743
James Preskitt            P. O. Box 1391
                          Kamuela, Hawaii  96743
Laurie Treweek            P. O. Box 2953
                          Kamuela, Hawaii  96743

The street addresses for the above are not available.

I

OFFICERS

The officers of the Community Association shall consist of a President, a Vice President, a Secretary, a Treasurer, and such other officers and assistant officers and agents as may be prescribed by the Community Articles of Incorporation.

The names and residence addresses of the persons who are to act as the initial officers of the Community Association are as follows:

NAME                      RESIDENCE ADDRESS
Kim Richards              P. O. Box 6878
                          Kamuela, Hawaii  96743
James Preskitt            P. O. Box 1391
                          Kamuela, Hawaii  96743
Laurie Treweek            P. O. Box 2953
                          Kamuela, Hawaii  96743

The street addresses for the above are not available.

II

LIMIT OF DEBT AND LIABILITY

The property of the Community Association shall alone be liable in law for the payment of its debts and
the discharge of its obligations. Neither the members of
the Community Association, nor the members of the Board of
Directors, nor any of the officers shall have any personal
liability for the payment of such debts or the discharge
of such obligations, except that the members of the
Community Association shall be subject to assessment for
and on account of debts, expenses and obligations of the
Community Association as provided in the Declaration.

XI

DISSOLUTION

The Community Association may be dissolved in
the manner set forth by law, except that upon any dissolu-
tion or liquidation, whether provided for herein or in the
Declaration, the assets of the Community Association shall
be granted, conveyed and assigned to a nonprofit corpora-
tion, association, trust or other organization, to be held
pursuant to the terms of the Declaration until such time
as the term of the Declaration shall expire. Any plan
providing for the distribution of assets adopted pursuant
to Section 415B-92, Hawaii Revised Statutes, or any
successor law, shall conform to the preceding sentence.
XII

INDEMNIFICATION

The Community Association shall indemnify, defend and hold harmless each present and future officer, employee, director and agent of the Community Association, and each person who serves at the request of the Community Association as an officer, employee, director or other agent of another corporation, partnership, joint venture, trust or other enterprise against and from any and all claims, penalties, fines, losses, damages, costs, expenses, and liabilities, including, without limitation, amounts of judgments, amounts paid in compromise settlements and reasonable attorneys' fees, resulting from or arising in connection with the performance of, and within the scope of, his duties as such officer, employee, director or agent, in any proceeding (other than an action by or in the right of the Community Association), if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Community Association, and with respect to any criminal proceeding, had no reasonable cause to believe the conduct of the person was unlawful. The termination of any proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, of itself, shall not create a presumption that
the person did not act in good faith and in a manner which
the person reasonably believed to be in or not opposed to
the best interests of the corporation, or that the person
had reasonable cause to believe that the person's conduct
was unlawful. In the case of an action or threatened
action by or in the name of the Community Association, the
Community Association shall pay all expenses incurred by
and satisfy any judgment or fine levied against any
person, provided that the Board of Directors determines
that such person acted with such care, including reason-
able inquiry, as an ordinarily prudent person in a like
position would use under similar circumstances, provided,
however, that even if the party seeking indemnification
failed to use such care an ordinarily prudent person in a
like position would use under similar circumstances, the
person is nevertheless entitled to indemnity by the
Community Association if either a court or the Board of
Directors makes a determination upon application that,
despite the adjudication of liability but in view of all
circumstances of the case, the person is fairly and rea-
sonably entitled to indemnity for such expenses which the
court shall deem proper.

All indemnification provided for above shall be
made by the Community Association unless it is determined
that the person seeking indemnification has failed to act
in accordance with the standards set forth in the preceding paragraph. Such determination shall be made: (a) by the Board of Directors by the majority vote of a quorum consisting of directors who were not parties to such proceeding; or (b) if such a quorum is not obtainable, by independent legal counsel in a written opinion; or (c) by the affirmative vote of a majority of the votes cast by the members present, in person or by proxy, constituting a quorum, at a meeting of the Community Association the notice of which meeting disclosed that such indemnification would be considered; or (d) by the order of a court in which an action, suit, or proceeding against the person to be indemnified is or was pending upon application made by the Community Association or the person to be indemnified or the attorney or any other person rendering services in connection with the defense, whether or not such application is opposed by the Community Association; provided, however, that in the event that the person to be indemnified has been successful on the merits or otherwise in defense of any action, suit or proceeding brought against him, it shall be deemed that indemnification is proper in the circumstances.

The foregoing right of indemnification shall not be exclusive of any other right to which those seeking indemnification may be entitled, as a matter of law or any
bylaw, agreement, vote of shareholders, or disinterested directors or otherwise, and shall continue as to a person who has ceased to be an officer, employee, director or agent of the Community Association or who has ceased to serve as an officer, employee, director or other agent of another corporation, partnership, joint venture, trust or other enterprise as requested by the Community Association, and shall inure to the benefit of the heirs, personal representatives, successors and assigns of each such officer, employee, director or agent.

The Community Association shall purchase and maintain insurance on behalf of any person who is or was an officer, employee, director or agent of the Community Association or who is or was serving at the request of the Community Association as an officer, employee, director or other agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the Community Association would have the power to indemnify him against such liability.

Expenses incurred by any officer, employee, director or agent of the Community Association or any person serving at the request of the Community Association as an officer, employee, director or other agent of
another corporation, partnership, joint venture, trust or other enterprise in defending any action, suit or proceeding shall be paid by the Community Association in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such officer, employee, director or agent to repay such amount in the event it shall ultimately be determined that such person is not entitled to be indemnified by the Community Association as authorized in this Article XII.

XIII

AMENDMENT

These Articles of Incorporation may be amended from time to time in the manner set forth by law, except that (a) no proposed amendment shall be adopted without the affirmative vote of not less than two-thirds (2/3) of the voting rights present, in person or by proxy, constituting a quorum, at a meeting duly called and held for the purpose of considering the amendment of these Articles of Incorporation, and (b) the percentage of the voting power necessary to amend a specific clause or provision of these Articles of Incorporation shall not be less than the percentage of affirmative votes required for action to be taken under such clause or provision.
We certify under the penalties of Section 415B-158, Hawaii Revised Statutes, that we have read the above statements and that the same are true and correct.

IN WITNESS WHEREOF, such parties have signed these Articles of Incorporation the day and year first above written.

Kim Richards  
J. B. M. Mongan

Incorporators
STATE OF HAWAII  )
COUNTY OF HAWAII  ) ss.

On this 15th day of July, 1996, before me appeared KIM RICHARDS, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

Lakin Crane
Notary Public
State of Hawaii

On this 15th day of July, 1996, before me appeared JEFFREY MONGAN, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

lakin crane
Notary Public
State of Hawaii